additional words suggested by the defendants. The Court must construe clause 14 as it stands and in my view its meaning may be expressed thus: When a closed package is offered to the master with a representation as to the nature of its contents, the master, when he signs the bill of lading, says, in effect, that he accepts the package as it appears on the outside but he knows nothing about the inside and will not be bound by any statement by the shipper in reference to it. But where, as in the present case, the person accepting the goods and signing the bill of lading does so, expressly, as agent for the shipowner, and not as Master or as agent for the Master, then in my view he does not fall within the words of clause 14. Accordingly if it were necessary to decide the point I would hold that clause 14, as it is now worded, does not protect the defendants where the bill of lading is signed by the shipping agent on behalf of the owners.

However, since the plaintiffs have not established to my satisfaction, either the contents of these packages or their value; and further, have not established their right to sue the defendants under section 1 of the Bills of Lading Act 1855 or to rely upon a statutory estoppel under section 3 of that Act, it follows that their claim fails and there must be judgment for the defendants with costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier; Laycock & Ong.*

WOO CHIN CHONG & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Storr J.) August 25, 1955]

[J. B. — Criminal Appeal No. 19 of 1956]

Criminal trial — Persons prosecuted in mass for an offence — Procedure.

Gaming — Prosecution having evidence rebutting presumption but not using it — Evidence of habitual gaming — Information on oath not produced as exhibit.

Where persons are prosecuted in mass for an offence and the prosecution intended to rely on presumptions against these persons, it is absolutely essential that the investigations are properly carried out and all documents that it is intended to tender as exhibits are correctly translated by a qualified interpreter.

In cases such as gaming, where by doing an act a presumption under the Ordinance is raised against the accused persons, if the prosecution have the evidence which rebuts that presumption in their possession to the knowledge of the accused persons, but do not use it, then it can be said that no presumption properly arises against the accused persons, as the prosecution have not brought out evidence in favour of the accused in their possession rebutting such presumption which they should have done.

The mere fact that one or two persons, not being members of a Club, went to the premises of the Club and stated that they were allowed to play "pai kow" once or twice does not prove that habitual gaming was being carried on.

Search warrants should have been produced by the prosecution to show their right of entry into the premises.

Quaere: Whether on a sworn information, a police officer, after an unsuccessful raid under the Common Gaming Houses Ordinance, can at any time in future raid the same premises?

MAGISTRATE'S CRIMINAL APPEAL.

P. F. de Souza for the appellants.

R. H. Hickling (Federal Counsel) for the respondent.

Storr J. : — This case arose out of a raid by the police led by D. S. P. Pilus on the premises of No. 10, Main Road, Kulai, at 8.35 p.m. on 31st January, 1955 (Chinese New Year). The premises were then occupied by (a) Siong Yap Club, (b) Malayan Chinese Association (Kulai Branch) and (c) Kulai Chinese Chamber of Commerce. There is no doubt that gaming was taking place at the premises at the time of the raid in the front room or main hall. D. S. P. Pilus said that the first 23 accused were found there, although he also stated that the 4th accused opened the door to let him into the premises. In the lounge of the premises were accused Nos. 24, 25, 26, 27 and 28.

The prosecution produced many Chinese documents, none of which were translated or apparently even studied or properly examined to see whether all or some of the accused were members of the Club, the M.C.A., or the Chamber of Commerce, or were on the premises innocently or in connection with the legal objects of the Club, the M.C.A. or the Chamber of Commerce. It was apparently assumed by D. S. P. Pilus that all were there for the purpose of gaming and he apparently relied on the presumptions in the Ordinance to save him what should have been part of his investigation into the case.

It is unfortunate that none of the exhibits produced by the prosecution in this case are properly marked or, for that matter, marked at all by the learned Magistrate or his clerk or Registrar; also none of the Chinese exhibits were translated when tendered. In fact the proceedings were far from satisfactory and one of the main reasons for this was the very poor investigation of this case by the police. In a case such as this, where persons are prosecuted in mass for an offence and the prosecution intended to rely on presumptions against these persons, it is absolutely essential that the investigations are properly carried out and all documents that it is intended to tender as exhibits are correctly translated by a qualified interpreter, especially when

Club Registers are produced with visitors' slips. There appears to have been no effort at all on the part of the police to check the persons arrested with lists of members of the Siong Yap Club, the M.C.A., or the Chamber of Commerce and those visitors properly introduced, or to see whether they were legally on the premises.

Having had the Register of the Club and the visitors' slips translated, I find that all except appellants Nos. 3 and 4 (women) and No. 26 are either members of the Club or were introduced by members on the 31st January, 1955. As to No. 4 appellant, it is apparent from the evidence that she was an employee and in spite of D. S. P. Pilus' evidence, was found in a room occupied by the M.C.A.

Further, the prosecution appear to have ransacked the premises irrespective of whether the exhibits belonged to the Club, the M.C.A., or the Chamber of Commerce, and seized many articles at random, including all the furniture in the front room. D. S. P. Pilus suggested that the electric bell was a contrivance by which the approach or entry of any person can be seen or ascertained by persons on the premises and that it was put there purposely for countering a raid. He later in cross-examination admitted that everyone entering the premises had to use it. I have seen the bell and it is quite an ordinary door bell or house bell.

In a case of this nature, where by doing an act a presumption under the Ordinance is raised against accused persons, if the prosecution have the evidence which rebuts that presumption in their possession to the knowledge of the accused persons, but do not use it, then I think it can be said that no presumption properly arises against the accused persons, as the prosecution have not brought out evidence in favour of the accused in their possession rebutting such presumption which they should have done.

In spite of the finding of the learned Magistrate, I cannot find that there is any evidence of habitual gaming — the mere fact that one or two persons, not members, went to the premises and stated that they were allowed to play "Pai Kow" once or twice does not in my view prove that habitual gaming was being carried on — and the presumption which the learned Magistrate found to have arisen did not, to my mind, arise at all.

In cross-examination D. S. P. Pilus stated that he recorded an information on oath on 21st January, 1955. This was not produced by the prosecution as an exhibit. It was apparently on this information that the premises were entered on 24th January, 1955, by A.S.P. C. M. Roberts (P.W. 10) who said the raid was unsuccessful. It therefore seems that D. S. P. Pilus was under the impression that on any sworn information, not produced in court, he could at any time in the future raid premises. I am in some doubt as to whether this is so. No search warrants were produced in court and it would be interesting to know if in fact the same search warrant was used on the 24th and 31st or, for that matter, how many were issued on the information of the 21st January, and on what dates and to whom. These should have been produced by the prosecution to show their right of entry into the premises, but were not produced.

As I have said, the whole proceedings, including the investigations, were far from satisfactory. From the evidence which was before the Court, it seems clear that all persons actually playing "Pai Kow" were members of the Club or visitors who had been introduced in a proper manner; the remainder appear to have been sitting in another room taking no part in the game.

I think that on the very scanty evidence before him as to the habitual gaming on the premises, had he had the evidence disclosed in the documents produced (but not translated), the learned Magistrate would not have found that a sufficient case had been made out to warrant calling on the appellants for defence or, if he did so, he would have misdirected himself as to the presumptions relied on by the prosecution having been properly raised by the evidence before him.

The appeals are allowed and the fines will be refunded to the appellants and all exhibits returned to the persons from whom they were taken.

Appeal allowed.

Solicitors: *De Souza & Abishega-Naden.*

LEW CHEOK HIN v. REG.

[A. Cr. J. (Taylor J.) April 3, 1956]

[Singapore — Magistrate's Appeal No. 243 of 1955]

Criminal Procedure Code, 1955, ss. 166 and 168(2) — When a person charged with one offence can be convicted of another without amendment of charge — Conviction on a "minor" offence — Penal Code ss. 417 and 420.

The accused in this case went to a jeweller's shop on February 19, 1955 and took a pair of diamond bracelets, worth over $4,000, on approval. On the same day he took a bracelet worth nearly $5,000 from another jeweller, on approval. On 21st he took another pair worth about $3,700 from a third shop, also on approval. On the following day he bargained with each jeweller for a small discount and completed the purchase. The sales were ostensibly for cash but in each case by a feigned mistake as to the date, he induced the vendor to accept a cheque post dated to February 24, 1955. The